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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/812,247
Filing Date: March 19, 2001
Appellant(s): HOYL ET AL.

Cyrus Bharucha
For Appellant

EXAMINER'S ANSWER

Art Unit: 3632

This is in response to the appeal brief filed September 14, 2007 appealing from the Office action mailed March 15, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

Art Unit: 3632

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,666,265	Lutz	9-1997
5,300,037	Delk	3-1994
5,300,037	Delk	4-1994

Art Unit: 3632

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-6, 11-16, 20-23, and 31-37 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Lutz 5,666,265, as discussed above, in view of Delk et al. (Delk 312) 5,292,312 in further Delk et al. (Delk 037) 5,300,037. Lutz discloses a rigid frame (160), a substrate (281) having a first surface having a first plurality of fasteners (male velcro) and a second surface (column 8, lines 46, adhesive), a cable fastener (282) completely detachable from the substrate. Lutz teaches the method of supporting one or more cables (507) with a cable fastener, releasably engaging the cable fastener to a substrate, providing a ridge frame. Lutz discloses the claimed invention

Art Unit: 3632

except that instead of fiber, electrical, or metal cables they show power cables. Therefore, because these two cables were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute power cables for fiber, metal, or electrical cables. The suggestion for such a modification is found in the applicant's own specification on page 9, lines 23ff). Lutz discloses all of the limitations of the claimed invention except for the hooks being mushroom-shaped, pine-tree-shaped. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substituted the mushrooms or pine-tree shaped stems, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice by the applicant's own admission on page 7, lines 8ff, that the exact type of releasable "VELCRO" mechanism is not critical to the invention (see *Harrori* 5,671,511). *In re Leshin*, 125 USPQ 416. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the cable fastener containing loops and the substrate containing hooks, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ

Art Unit: 3632

167. Lutz discloses all of the limitations of the claimed invention except for the cable fastener having a head having a width greater than the predetermined width and defining an opening. Delk 312 teaches that it is known to have a substrate (20) having a first surface having a plurality of first fasteners (23) and a cable fastener/tie wrap (30) having a head portion having opening/means for encircling (37) being detachable from the substrate having a second surface having a second plurality of fasteners (column 6, lines 54ff). It would have been obvious to one having ordinary skill in the art to have modified Lutz to have substituted the cable fastener type as taught by Delk 312 since the cable fasteners are art-recognized equivalents at the time the invention both being used as means of holding cables/tubular members to substrates. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the tie wrap containing loops and the substrate containing hooks, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167. Lutz in view of Delk 312 discloses all of the limitations of the claimed invention except for one of the plurality of hook and loop mechanisms that covers at least all of one side of the cable fastener and the head portion having a

Art Unit: 3632

size substantially similar to a size of the variable width opening. Delk 037 discloses a substrate (20) having a first surface of a plurality of fasteners of loop material and adhesive on the second surface opposite the first surface; a cable fastener comprising an opening (37), a an elongated body (34), a head portion (33) having a size substantially similar to a size of the opening. It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Lutz in view of Delk 312 to have modified the cable fastener of Delk 037 for the purpose of providing a cable fastener to hold a wider variety of cable sizes and shapes.

Claims 1-6, 11-16, 20-23, and 31-37 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Lutz 5,666,265, as discussed above, in view of Delk et al. (Delk 037) 5,300,037. Lutz discloses all of the limitations of the claimed invention except for the cable fastener having a head having a width greater than the predetermined width and defining an opening. Delk teaches that it is known to have a substrate (20) having a first surface having a plurality of first fasteners (23) and a cable fastener/tie wrap (30) having a head portion (33) having opening/means for encircling (37) having a second surface having a second plurality of fasteners (column 7, lines 44ff) covering at least all of one side of the cable fastener and the head

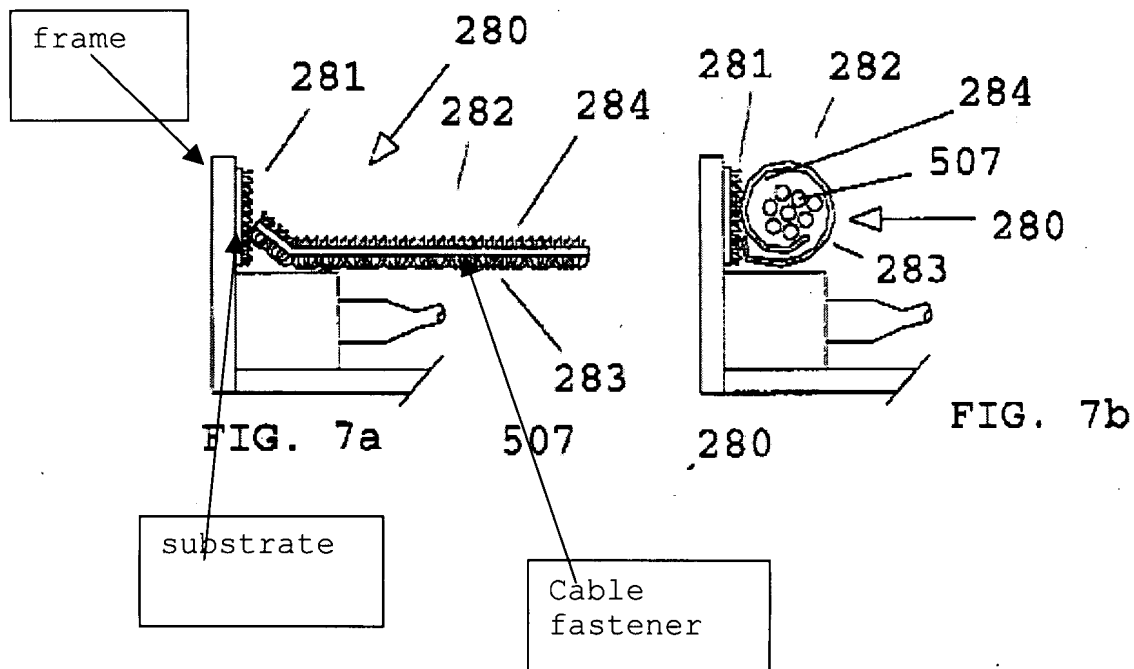
Art Unit: 3632

portion having a size substantially similar to a size of the variable width opening, and an elongated body (34). It would have been obvious to one having ordinary skill in the art to have modified Lutz to have substituted the cable fastener type as taught by Delk since the cable fasteners are art-recognized equivalents at the time the invention both being used as means of holding cables/tubular members to substrates. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the tie wrap containing loops and the substrate containing hooks, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

(10) Response to Argument

In response to applicant's arguments argument that Lutz in view of Delk 037 or Delk 312 does not disclose **"the cable fastener is completely detachable from the substrate, and the second plurality of fasteners is configured not to engage any portion of the cable fastener"** this argument is traversed. Lutz teaches of a rigid frame

Art Unit: 3632



(120) having at least one substantially planar surface of the frame (160), a substrate (281) having a first surface having a first plurality of fasteners (male Velcro) and a second surface (adhesive, see column 8, lines 50ff) is coupled to the substantially planar surface of the rigid frame (160), a cable fastener/means for supporting cables (282) comprising a second plurality of fasteners/means for releasably engaging the cable fastener to a substrate (283 or 284) having one of the plurality of hook and loop mechanisms that covers at least all of one side of the cable fastener and wherein the second plurality of fasteners (283 or 284) is configured to engage the first plurality of fasteners (male velcro of 281) allowing the cable fastener to be completely detachable from the substrate (281).

Art Unit: 3632

Lutz as stated within the final rejection and as discussed and shown above clearly discloses **"the cable fastener is completely detachable from the substrate, and the second plurality of fasteners"** as claimed by the applicant within the claims. The examiner agrees with the applicant in the arguments that Lutz does not disclose **"the second plurality of fasteners is configured not to engage any portion of the cable fastener"** therefore within the final rejection the examiner does not rely on Lutz alone but Lutz in combination with Delk 5,300,037 for such limitations. Delk 5,300,037 discloses a cable fastener/tie wrap (30) having a second surface having a second plurality of fasteners (top surface being 41 having hook material, see column 8, lines 4ff) covering at least all of one side of the cable fastener for engaging the substrate (20) having a first plurality of fasteners (23 being of loop material) wherein the other side (figure 4) as stated within the specification in column 8, line 13ff "the bottom surface of strap portion 30 is a generally smooth backing material". Therefore Delk 037 clearly supports the examiner's rejection of Lutz in view of Delk 037 by teaching **"the second plurality of fasteners is configured not to engage any portion of the cable fastener"** since Delk's cable fastener (figure 3) has a plurality of fasteners on one side and a smooth backing on the other side which meets the limitations of a cable

Art Unit: 3632

fastener having **"the second plurality of fasteners is configured not to engage any portion of the cable fastener"**.

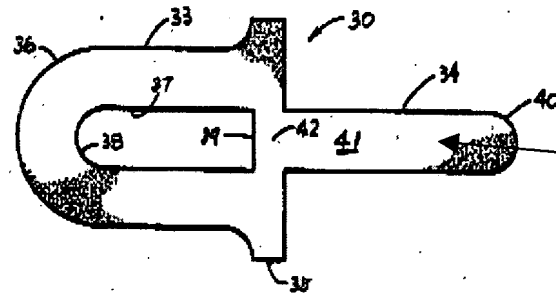
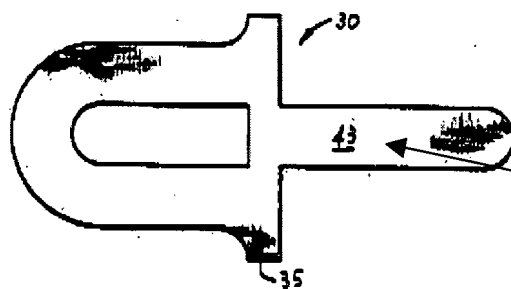


FIG. 4

At least all of one side of cable fastener having a Plurality of fasteners configured not to engage any portion of cable fastener



other side having a smooth backing therefore not capable of engaging the other side with the plurality of fasteners

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In regards to the applicant's arguments that Delk 037 does not disclose "a second plurality of fasteners covers at least

Art Unit: 3632

all of one side", this argument is hereby traversed. The applicant is correct in stating that

Delk 037 states that "the entire upper surface of base plate 20 could conveniently be covered with [loop type VELCRO] material." (Delk 037 at 7:45-48.) However, this teaching applies to the base plate 20, not to the strap portion 30. With regard to the strap portion 30, Delk 037 states that the top surface "need **not** be covered with artificial briar material," but rather that hook type material on the strap portion "need only be formed where it is needed" on areas that will ultimately engage with loops on the base portion 20. (Delk 037 at col. 8, lines 7-13 (emphasis added).)

However, the applicant has only read a section of the specification that teaches that Delk the strap does not have to have fasteners that cover at least all of one side of the strap portion. The examiner would like refer the applicant to column, column 8, line 4ff which states "top surface 41 of strap 30 is made from hook type VELCRO" which supports the examiner's argument that the cable faster is completely covered with a plurality of fasteners on at least all of one side of the cable fastener. The arguments of the applicant are correct in that the specification supports that the entire surface does not have to have the plurality of fasteners however, this is a modification or suggest to modify the primary embodiment of the strap having a plurality of fasteners on the entire surface of one side of the invention, as stated in column 8, line 4ff)

Art Unit: 3632

which clearly meets or teaches the applicant's claimed limitation.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is within the knowledge generally available to one having ordinary skill in the art to have modified Lutz to have substituted the cable fastener type as taught by Delk 037 since both Lutz and Delk teach of cable fasteners which are art-recognized equivalents at the time the invention both being used as means of holding cables/tubular members to substrates.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or

Art Unit: 3632

motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is within the knowledge generally available to one having ordinary skill in the art and common sense to have modified Lutz to have substituted the cable fastener as taught by Delk 312 since both Lutz and Delk teach of cable fasteners which are art-recognized equivalents at the time the invention both being used as means of holding cables/tubular members to substrates. The substitution of one cable fastener having a Velcro means for another is a well known engineering choice without destroying the invention.

In response to applicant's argument that "Motivations taken from Appellant's disclosure are impermissible hindsight" this argument is hereby traversed. The examiner would like to point out that the applicant's disclosure is admissible as a means for disputing an argument since within the specification the applicant has clearly disclosed that the type of cables or the type of Velcro is not critical to the invention and therefore a engineering design choice. This admission can be found in the specification on page 9, lines 23ff, "any elongated cable-like

Art Unit: 3632

materials including metal cables, fiber optic cables, electrical cords, wires, ropes, and the like" and on page 7, lines 8ff

"hook and loop" is used in generalized sense to mean any of several reclosable fastening material, such as Velcro TM. While referred to as "hook" and "loop", the substrate 502 material need not necessarily comprise hooks or loops, but rather contain any of several engagement mechanisms. For instance, in the preferred embodiment, a flame-retardant industrial-grade material produced by 3M TM is used for the substrate 502. The material contains only the equivalent of "hooks," but they are not actually hooks. The material, known as Dual Lock TM, is a polypropylene material containing hundreds of mushroom-shaped stems per square inch. When two pieces of Dual Lock TM material are pressed together, the mushroom-shaped stems interlock with each other, creating a separable bond. Alternative versions of Dual Lock TM materials provide pine-tree-shaped stems. A flame retardant Dual Lock TM fastener is further described in U.S. Patent Number 5,691,021 issued to Kobe. As used herein, the term "hook and loop" is intended to encompass Velcro TM, Dual Lock TM, and any other similar material that provides a means for creating a releasable engagement bond.

The above statements from the applicant's specification clearly show that the type of cable and the type of Velcro are not critical and are only design choices. Therefore as long as Lutz, Delk 037, and Delk 312 teach of a type of cable and a type of Velcro as disclosed by the applicant then the limitations of the claimed invention referring to the cable and Velcro types have been met since they are not critical to the patentability of the invention as admitted by the applicant's own disclosure.

Art Unit: 3632

In response to applicant's argument that the bulky wide end of Delk 312 would limit the possible options for securing, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's argument that central cutout of Delk 037 would not work with the Lutz reference, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Art Unit: 3632


(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Kimberly Wood


KIMBERLY WOOD
PRIMARY EXAMINER

Conferees:

Carl Friedman CF 

Meredith Petravick MP 